

Where establishments sell both food which has been prepared for immediate consumption and grocery-type items and also provide facilities for on-premises consumption, the lower rate of tax can be charged on the grocery-type items if the selling areas are separated and served by separate means of collection. See 86 Ill. Adm. Code 130.310(b)(3). (This is a GIL.)

February 5, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated January 8, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I need a written response to the following specific sales tax questions. What rate of tax should be charged on the following items:

Salad Bar - Customers receive a container and fill the container with the salad items. The salad dressing is available to be put on the salad but about 60% of the customers put the dressing in another container to be used later.

Premade Cold Sandwiches - These sandwiches are available in a cooler.

Bottled Water - Sold in individual bottles

Fresh Fruit - Sold by weight

The company is licensed as a retail establishment and not as a restaurant. The location has NO seating available. All foods must be consumed off the premises.

Thank you for your help in obtaining this information.

For your information, we have attached a copy of 86 Ill. Adm. Code 130.310, which is the regulation for Food, Drugs, Medicines and Medical Appliances. The Illinois Supreme Court ruling in Canteen Corp. vs. Illinois Department of Revenue, 123 Ill.2d 95, as well as business trends (i.e., increased numbers of convenience stores with seating) have changed and complicated the application of these regulations.

The current regulations no longer utilize a high/low rate distinction based solely on the size or quantity in which food items are sold. Rather, the appropriate rate of tax for food items sold is determined by the character of the retailers' establishment as well as the nature of the sales.

Retailers providing seating or facilities for on-premises consumption of food incur tax at the high rate on all food sales including sales of food items that would otherwise qualify for the reduced rate (i.e., grocery type items). Where establishments sell both food which has been prepared for immediate consumption and grocery-type items and also provide facilities for on-premises consumption, the lower rate of tax can be charged on the grocery-type items if the selling areas are partitioned and served by separate means of collection. See Section 130.310(b)(3). The partition need not be an impenetrable barrier. However, there must be some partition of the area which is selling grocery-type items from the area selling immediate consumption items in which the facilities for on-premises consumption are located.

If there are no facilities for on-premises consumption of food, retailers must then determine whether the majority of food sales are bulk sales or sales for immediate consumption. If 50% or more of all food sales are for immediate consumption then retailers must charge high rate on all food sales. If 50% or more of all food sales are in bulk (i.e., grocery type items) then all food sales are at the low rate with the exception of hot food, food prepared for immediate consumption and high rate items such as soft drinks, specifically set out in the regulations.

The impact of the Canteen case is reflected in the current definition of "food prepared for immediate consumption." Prior to Canteen, "food prepared for immediate consumption" included all foods packaged in single serving quantities. However, Section 130.310(b)(6) states as follows:

"Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. Retailers who sell food which they do not prepare in any way, are not selling food for immediate consumption, i.e., pre-packaged candy bars, snacks, chips, ice cream, unless that food is to be consumed on the retailer's premises. It is presumed that retailers who sell food prepared for immediate consumption in individual single-sized servings will sell all such items for consumption without substantive delay. Thus, for example, a retailer of individual sandwiches, doughnuts or cookies prepared in the morning will be subject to the high rate of tax regardless of when during a business day such items are sold and actually consumed. "Premises" are that area over which the vendor exercises control, whether by lease, contract, license or otherwise, and, in addition, the area in which facilities for eating are provided, including areas designated for, or devoted to, use in conjunction with the business engaged in by the vendor. Thus, all food sold by a restaurant for consumption on premises, whether prepared for immediate consumption or not, is subject to the high rate. Vendor premises would include eating areas provided by employers for employees, common or shared eating areas in shopping centers or public buildings if customers of food vendors adjacent to such areas are permitted to use them for consumption of food products. It will be presumed that food sold by vendors with on-premises consumption facilities will, in fact, be consumed on premises unless the vendor presents evidence to the contrary from its books and records.

This is an important difference. The result is that candy bars and other snack items packaged in single serving quantities by the manufacturers are no longer automatically categorized as food sold for immediate consumption.

Please note that effective June 1, 1996 the low rate of tax applies to all food sold through a vending machine, except soft drinks and food products that are dispensed hot from a vending machine. This rule applies, regardless of the location of the vending machine or whether on-premises facilities for consumption are provided at that location.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.